

REMARKS

The Final Office Action mailed March 18, 2009 has been received and reviewed. By the present Response and Amendment, Claims 1, 13, 16 and 78 are amended. No new matter is introduced.

Priority

The Office Action indicates that certified copies of the priority documents have not been submitted. Applicant's records show that certified copies of the priority documents were submitted to the U.S. Receiving Office in the PCT stage of this application on March 31, 2003, and that the U.S. Receiving Office confirmed that certified copies of the priority documents were transmitted to the International Bureau. The International Bureau subsequently republished a corrected version of the International Application indicating the acknowledgement of the priority claims. (See Attachment hereto).

Drawings / Specification

The drawings are objected to for not showing the claimed "receiver" and the specification is objected to for failing to provide antecedent basis for this element. Applicant traverses, as the portion of the piston that receives the lancet is adequately shown in Figure 46 in an example form, identified with reference number 416, and described in the specification at pages 39-40. The claim language regarding the "receiver" is nevertheless amended herewith to correspond exactly to the terminology used in the specification regarding this feature shown in the drawings. Accordingly, these grounds of rejection are believed to be fully addressed.

35 U.S.C. §112

Claims 13-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Claim 13 is amended herewith to address this rejection.

35 U.S.C. §101

Claims 78-80 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The indicated claim language has been amended as suggested by the Examiner to address this ground of rejection.

35 U.S.C. §103

Claims 1, 2, 5-12, 17-20, 69 and 70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to Schraga in view of U.S. Patent No. 6,706,159 to Moerman et al. Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to Schraga in view of U.S. Patent No. 6,706,159 to Moerman et al. and further in view of U.S. Patent No. 6,197,041 to Shichman et al. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to Schraga in view of U.S. Patent No. 6,706,159 to Moerman et al. and further in view of U.S. Patent No. 5,385,571 to Morita et al. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,100 to Schraga in view of U.S. Patent No. 6,706,159 to Moerman et al. and further in view of U.S. Patent No. 5,152,775 to Ruppert et al.

Applicant respectfully requests reconsideration and withdrawal of these grounds of rejection in view of the present claim amendments. As presently amended, Claim 1 recites "at least one guide member aligned transversely to the path of travel of the lancet within the cassette for engaging the separated protective cap to guide the protective cap out of the path of travel..." The Examiner has applied the "guide posts surrounding channel 92" of the Schraga '100 reference to Applicant's claimed guide member. It is noted, however, that the channel 92 of the Schraga '100 reference is aligned with the direction of travel of the lancet, not transverse to it. The presently amended claim

language further clarifies that the guide member is “aligned transversely to the path of travel of the lancet,” thereby clearly distinguishing over the teaching of the Schraga ‘100 reference. Neither the Schraga ‘100 reference, nor any other art of record discloses or suggests this feature of the present invention as claimed.

Also, the Examiner has applied the “spacing gap defined between the shield assembly 42 and the lancet carrier” of the Schraga ‘100 reference to Applicant’s claimed “retainer position within the cassette...”. This assertion is inconsistent with the assertion that Schraga’s cap 72 is removed by action of “piston 24” against the “guide posts surrounding channel 92.” If the device disclosed in the Schraga ‘100 reference were operated in the manner asserted in the Office Action, the cap 72 of a lancet will only be removed from the lancet tip when that particular lancet is engaged with the piston 24. And when a lancet is in position for engagement with the piston, the cap 72 of that “active” lancet is exposed for removal at the opening in the housing 46, as is clearly shown in Figure 1 and Figure 6 of the Schraga ‘100 reference. When the cap 72 is positioned at the opening in the housing 46, it is no longer within the “spacing gap defined between the shield assembly 42 and the lancet carrier” of the Schraga ‘100 reference, as suggested in the Office Action. Therefore, when the cap 72 is removed from the lancet, the separated cap can not be retained within the cassette. This is clearly evidenced by Figure 4 of the Schraga ‘100 reference, which shows caps on the unused lancets, but no caps retained anywhere in the lancing device or in the cartridge for the used lancets. Thus, neither the Schraga ‘100 reference, nor any other art of record discloses or suggests this feature of the present invention as claimed.

Claims 78-80 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2004/0102803 to Boecker et al. Applicant respectfully traverses, as the Boecker et al. reference is not properly considered as prior art against the present invention. The Boecker et al. reference indicates a filing date of December 18, 2002, whereas the present application is based on PCT/US03/05159,

having priority dates of 21 February 2002 (DE 10208575.7), 11 June 2002 (US 60/387639), 17 September 2002 (US 60/411834), and 24 September 2002 (DE 10245721.2) (see Attachment submitted herewith). Accordingly, this ground of rejection is believed to be improper, and withdrawal is requested.

CONCLUSION

In view of the amendments submitted herein and the above comments, it is believed that all grounds of rejection are overcome and that the application has now been placed in full condition for allowance. Accordingly, Applicant earnestly solicits early and favorable action. Should there be any further questions or reservations, the Examiner is urged to telephone Applicant's undersigned attorney at (770) 984-2300.

Respectfully submitted,



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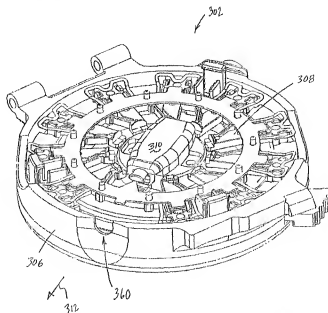
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(54) Title: BLOOD SAMPLING DEVICE



(57) Abstract: A device (302) for sampling and/or analyzing blood or other body fluid of a subject. A housing (306) contains a plurality of lancets (308) and optionally includes test elements (324) to take up a sample of blood, an evaluation system and a display. A complete system that can be handled as a single device, for example in the form of a wristwatch, includes a multiplicity of test elements (324) and lancets (308), which can be brought successively to a working position to perform multiple measurements. A cassette or carrier (320) includes multiple lancets (308) and/or test elements (324), for insertion into the device.

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